

AMENDED IN ASSEMBLY MAY 4, 2005

AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## ASSEMBLY BILL

**No. 916**

**Introduced by Assembly Member Canciamilla**

February 18, 2005

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An act to ~~amend Section 368 of~~ *add Section 12022.65 to* the Penal Code, relating to crime.

### LEGISLATIVE COUNSEL'S DIGEST

AB 916, as amended, Canciamilla. Elder abuse.

Existing law proscribes various crimes committed against an elder or dependent adult when the person knows or reasonably should know that the victim is an elder or dependent adult, including violating any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the personal identifying information or property of an elder or dependent adult and provides that this crime is punishable by imprisonment in a county jail for a period not exceeding one year, or in the state prison for 2, 3, or 4 years when the money, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$400.

This bill would provide that any person who violates these provisions is punishable by imprisonment ~~in a county jail for a period not exceeding one year or in the state prison 3, 4, or 6 years~~ *the state prison for an additional 1, 2, 3, 4, or 5 years if the victim's loss exceeds \$50,000, \$150,000, \$500,000, \$1,000,000, or \$2,500,000, respectively.*

*Because this bill would increase the duties of local officials to plead and prove additional circumstances in prosecuting criminal violations, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 12022.65 is added to the Penal Code, to  
2     read:

3     12022.65. (a) *When any person commits theft, embezzlement,*  
4     *forgery, fraud, or identity theft with respect to the property or*  
5     *personal identifying information of an elder or dependent adult*  
6     *as defined in subdivisions (g) and (h) of Section 368, the court*  
7     *shall impose an additional term as follows:*

8     (1) *If the loss exceeds fifty thousand dollars (\$50,000), the*  
9     *court, in addition and consecutive to the punishment prescribed*  
10    *for a felony violation of subdivisions (d) or (e) of Section 368 for*  
11    *which the defendant has been convicted, shall impose an*  
12    *additional term of one year.*

13    (2) *If the loss exceeds one hundred fifty thousand dollars*  
14    *(\$150,000), the court, in addition and consecutive to the*  
15    *punishment prescribed for a felony violation of subdivisions (d)*  
16    *or (e) of Section 368 for which the defendant has been convicted,*  
17    *shall impose an additional term of two years.*

18    (3) *If the loss exceeds five hundred thousand dollars*  
19    *(\$500,000), the court, in addition and consecutive to the*  
20    *punishment prescribed for a felony violation of subdivisions (d)*  
21    *or (e) of Section 368 for which the defendant has been convicted,*  
22    *shall impose an additional term of three years.*

23    (4) *If the loss exceeds one million dollars (\$1,000,000), the*  
24    *court, in addition and consecutive to the punishment prescribed*  
25    *for a felony violation of subdivisions (d) or (e) of Section 368 for*

1 *which the defendant has been convicted, shall impose an*  
2 *additional term of four years.*

3 *(5) If the loss exceeds two million five hundred thousand*  
4 *(\$2,500,000), the court, in addition and consecutive to the*  
5 *punishment prescribed for a felony violation of subdivisions (d)*  
6 *or (e) of Section 368 for which the defendant has been convicted,*  
7 *shall impose an additional term of five years.*

8 *(b) In any accusatory pleading involving multiple charges of*  
9 *taking, the additional terms provided in this section may be*  
10 *imposed if the aggregate losses to the victims from all felonies*  
11 *exceed the amounts specified in this section and arise from a*  
12 *common scheme or plan. All pleadings under this section shall*  
13 *remain subject to the rules of joinder and severance stated in*  
14 *Section 954.*

15 *(c) The additional terms provided in this section shall not be*  
16 *imposed unless the facts of the taking, in excess of the amounts*  
17 *provided in this section are charged in the accusatory pleading*  
18 *and admitted or found to be true by the trier of fact.*

19 *SEC. 2. No reimbursement is required by this act pursuant to*  
20 *Section 6 of Article XIII B of the California Constitution because*  
21 *the only costs that may be incurred by a local agency or school*  
22 *district will be incurred because this act creates a new crime or*  
23 *infraction, eliminates a crime or infraction, or changes the*  
24 *penalty for a crime or infraction, within the meaning of Section*  
25 *17556 of the Government Code, or changes the definition of a*  
26 *crime within the meaning of Section 6 of Article XIII B of the*  
27 *California Constitution.*

28 ~~SECTION 1. Section 368 of the Penal Code is amended to~~  
29 ~~read:~~

30 ~~368. (a) The Legislature finds and declares that crimes~~  
31 ~~against elders and dependent adults are deserving of special~~  
32 ~~consideration and protection, not unlike the special protections~~  
33 ~~provided for minor children, because elders and dependent adults~~  
34 ~~may be confused, on various medications, mentally or physically~~  
35 ~~impaired, or incompetent, and therefore less able to protect~~  
36 ~~themselves, to understand or report criminal conduct, or to testify~~  
37 ~~in court proceedings on their own behalf.~~

38 ~~(b) (1) Any person who knows or reasonably should know~~  
39 ~~that a person is an elder or dependent adult and who, under~~  
40 ~~circumstances or conditions likely to produce great bodily harm~~

1 or death, willfully causes or permits any elder or dependent adult  
2 to suffer, or inflicts thereon unjustifiable physical pain or mental  
3 suffering, or having the care or custody of any elder or dependent  
4 adult, willfully causes or permits the person or health of the elder  
5 or dependent adult to be injured, or willfully causes or permits  
6 the elder or dependent adult to be placed in a situation in which  
7 his or her person or health is endangered, is punishable by  
8 imprisonment in a county jail not exceeding one year, or by a  
9 fine not to exceed six thousand dollars (\$6,000), or by both that  
10 fine and imprisonment, or by imprisonment in the state prison for  
11 two, three, or four years.

12 (2) If in the commission of an offense described in paragraph  
13 (1), the victim suffers great bodily injury, as defined in Section  
14 12022.7, the defendant shall receive an additional term in the  
15 state prison as follows:

16 (A) Three years if the victim is under 70 years of age.

17 (B) Five years if the victim is 70 years of age or older.

18 (3) If in the commission of an offense described in paragraph  
19 (1), the defendant proximately causes the death of the victim, the  
20 defendant shall receive an additional term in the state prison as  
21 follows:

22 (A) Five years if the victim is under 70 years of age.

23 (B) Seven years if the victim is 70 years of age or older.

24 (c) Any person who knows or reasonably should know that a  
25 person is an elder or dependent adult and who, under  
26 circumstances or conditions other than those likely to produce  
27 great bodily harm or death, willfully causes or permits any elder  
28 or dependent adult to suffer, or inflicts thereon unjustifiable  
29 physical pain or mental suffering, or having the care or custody  
30 of any elder or dependent adult, willfully causes or permits the  
31 person or health of the elder or dependent adult to be injured or  
32 willfully causes or permits the elder or dependent adult to be  
33 placed in a situation in which his or her person or health may be  
34 endangered, is guilty of a misdemeanor. A second or subsequent  
35 violation of this subdivision is punishable by a fine not to exceed  
36 two thousand dollars (\$2,000), or by imprisonment in a county  
37 jail not to exceed one year, or by both that fine and  
38 imprisonment.

39 (d) Any person who is not a caretaker who violates any  
40 provision of law proscribing theft, embezzlement, forgery, or

1 ~~fraud, or who violates Section 530.5 proscribing identity theft,~~  
2 ~~with respect to the property or personal identifying information~~  
3 ~~of an elder or a dependent adult, and who knows or reasonably~~  
4 ~~should know that the victim is an elder or a dependent adult, is~~  
5 ~~punishable by imprisonment in a county jail not exceeding one~~  
6 ~~year, or in the state prison for three, four, or six years, when the~~  
7 ~~moneys, labor, goods, services, or real or personal property taken~~  
8 ~~or obtained is of a value exceeding four hundred dollars (\$400);~~  
9 ~~and by a fine not exceeding one thousand dollars (\$1,000), by~~  
10 ~~imprisonment in a county jail not exceeding one year, or by both~~  
11 ~~that fine and imprisonment, when the moneys, labor, goods,~~  
12 ~~services, or real or personal property taken or obtained is of a~~  
13 ~~value not exceeding four hundred dollars (\$400).~~

14 ~~(e) Any caretaker of an elder or a dependent adult who~~  
15 ~~violates any provision of law proscribing theft, embezzlement,~~  
16 ~~forgery, or fraud, or who violates Section 530.5 proscribing~~  
17 ~~identity theft, with respect to the property or personal identifying~~  
18 ~~information of that elder or dependent adult, is punishable by~~  
19 ~~imprisonment in a county jail not exceeding one year, or in the~~  
20 ~~state prison for three, four, or six years when the moneys, labor,~~  
21 ~~goods, services, or real or personal property taken or obtained is~~  
22 ~~of a value exceeding four hundred dollars (\$400), and by a fine~~  
23 ~~not exceeding one thousand dollars (\$1,000), by imprisonment in~~  
24 ~~a county jail not exceeding one year, or by both that fine and~~  
25 ~~imprisonment, when the moneys, labor, goods, services, or real~~  
26 ~~or personal property taken or obtained is of a value not exceeding~~  
27 ~~four hundred dollars (\$400).~~

28 ~~(f) Any person who commits the false imprisonment of an~~  
29 ~~elder or a dependent adult by the use of violence, menace, fraud,~~  
30 ~~or deceit is punishable by imprisonment in the state prison for~~  
31 ~~two, three, or four years.~~

32 ~~(g) As used in this section, "elder" means any person who is~~  
33 ~~65 years of age or older.~~

34 ~~(h) As used in this section, "dependent adult" means any~~  
35 ~~person who is between the ages of 18 and 64, who has physical~~  
36 ~~or mental limitations which restrict his or her ability to carry out~~  
37 ~~normal activities or to protect his or her rights, including, but not~~  
38 ~~limited to, persons who have physical or developmental~~  
39 ~~disabilities or whose physical or mental abilities have diminished~~  
40 ~~because of age. "Dependent adult" includes any person between~~

1 the ages of 18 and 64 who is admitted as an inpatient to a  
2 24-hour health facility, as defined in Sections 1250, 1250.2, and  
3 1250.3 of the Health and Safety Code.

4 (i) As used in this section, “caretaker” means any person who  
5 has the care, custody, or control of, or who stands in a position of  
6 trust with, an elder or a dependent adult.

7 (j) Nothing in this section shall preclude prosecution under  
8 both this section and Section 187 or 12022.7 or any other  
9 provision of law. However, a person shall not receive an  
10 additional term of imprisonment under both paragraphs (2) and  
11 (3) of subdivision (b) for any single offense, nor shall a person  
12 receive an additional term of imprisonment under both Section  
13 12022.7 and paragraph (2) or (3) of subdivision (b) for any single  
14 offense.

15 (k) In any case in which a person is convicted of violating  
16 these provisions, the court may require him or her to receive  
17 appropriate counseling as a condition of probation. Any  
18 defendant ordered to be placed in a counseling program shall be  
19 responsible for paying the expense of his or her participation in  
20 the counseling program as determined by the court. The court  
21 shall take into consideration the ability of the defendant to pay,  
22 and no defendant shall be denied probation because of his or her  
23 inability to pay.